

### **REMARKS/ARGUMENTS**

In view of the foregoing amendments and following remarks, favorable reconsideration of the claims is respectfully requested.

#### ***Status of the Claims***

Claims 1 – 15 are currently under examination.

Claim 1 has been amended to recite that the concentration of  $\text{TiO}_2$  ranges from 30% to 35%, by weight, and the concentration of  $\text{ZnO}$  ranges from 2% to 25%, by weight. (See original Claims 6 and 7).

Claim 14 has been amended to recite that the step of mixing includes mixing a concentration of  $\text{TiO}_2$  pigment ranging from 30% to 35%, by weight, and a concentration of  $\text{ZnO}$  pigment ranging from 2% to 25%, by weight.

Claims 14 and 15 have been amended to change their dependencies.

Claims 3 and 5 – 7 have been cancelled.

#### ***Amendments to the Specification***

The Examiner has objected to the specification for containing informalities. The specification has been amended as suggested by the Examiner.

#### ***Rejections under 35 U.S.C. § 112, second paragraph***

Claims 1 – 15 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action asserts that it is not clear what is encompassed by the term “oily dispersion”, and whether the “oily dispersion is limited to a single oily dispersing vehicle or is another phase present. In the context of the present invention, it can be seen that the term “dispersion” is used in reference to the pigments being dispersed in a single oily phase that includes a single oily dispersing vehicle and a single emollient vehicle. This is exemplified in paragraph [0033] of the published U.S. application. Accordingly, it can be seen that the claims are definite and it is respectfully requested that the rejections under U.S.C. § 112, second paragraph, be withdrawn.

#### ***Prior art rejections***

Claims 1, 5, 7, 8, and 15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,980,871 to Lukenbach.

As noted above, Claim 1 has been amended to recite that the concentration of  $\text{TiO}_2$  ranges from 30% to 35%, by weight, and the concentration of  $\text{ZnO}$  ranges from 2% to 25%, by weight. Lukenbach does not disclose or suggest a composition comprising a single oily phase having a concentration of  $\text{TiO}_2$  ranging from 30% to 35%, by weight. Accordingly, Lukenbach fails to disclose or suggest each and every element recited in independent Claim 1.

Claims 2-4, 6, and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lukenbach. Claims 9 – 12 have been rejected as being unpatentable over Lukenbach in combination with one or more references. Lukenbach is the primary reference relied on in all the rejections.

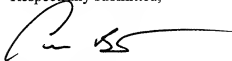
As noted above, Lukenbach fails to disclose or suggest a composition having a single oily phase in which the concentration of  $\text{TiO}_2$  ranges from 30% to 35% by weight. Such a range is not disclosed or suggested by any of the cited references. Furthermore, there is no disclosure or suggest the benefits that are arrived at with a sun screen composition having the recited ranges of  $\text{TiO}_2$  and  $\text{ZnO}$ . For instance, the examples in the instant application provide compositions having an SPF of 30. Such an SPF is unexpected based on the teachings of the cited references. Accordingly, it is respectfully submitted that the claimed invention as claimed in independent Claim 1 is not disclosed or suggested by Lukenbach, whether considered individually or in combination with any of the other cited references.

In view of the foregoing amendments and remarks, it is respectfully submitted that the rejections under 35 U.S.C. § 102(b), 103(a), and 112 have been overcome.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Appl. No.: 10/500,756  
Amdt. dated 04/17/2008  
Reply to Office Action of 10/17/2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy J. Balts', with a long horizontal flourish extending to the right.

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LEGAL02/30778153v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON April 17, 2008.